BOMBAY HIGH COURT

Babubhai Girdharlal

Vs.

Ujamlal Hargovandas

First Appeal No. 354 of 1932

(John Beaumont, Kt., C.J. and N.J. Wadia, J.)

21.01.1937

JUDGMENT

John Beaumont, Kt., C.J.

1. This is an appeal from a decision of the First Class Subordinate Judge of Ahmedabad. The plaintiff sues for partition of joint family property. One Hargovandas was the father of the plaintiff, of his brother defendant No. 1, and of one Manilal who died before the suit leaving defendants Nos. 2 to 4 his sons. The plaintiff's contention is that Hargovandas and his sons when living constituted a joint Hindu family, and he claims to be entitled to one-third of the joint family property. His claim that he is entitled to one-third of the joint family property is not disputed, but the question which arises on this appeal is whether a house described in the plaint as property "B" is joint family property, or was separate property of Hargovandas in which case it was disposed of under his will, and the plaintiff takes no interest. The learned Judge held that the house was separate property of Hargovandas, and in this appeal the plaintiff contests that finding.

2. The house in question was acquired by Hargovandas by two purchases, one made on January 1, 1888, when property was acquired for ₹ 641/-, and the other made on February 4, 1893, when property was acquired for ₹ 999/-. Those properties were ultimately amalgamated and formed property "B".

3. Now on the evidence, to which I will refer in a moment, it is not in my opinion shown how the purchase money for those two purchases was acquired by Hargovandas, and there being no evidence as to how the purchase money was acquired, the question is on whom is the burden of proving that the property was separate or joint. Whoever has to discharge the burden of proof has failed. The law, I think, is clearly established that from the existence of a joint family, it is not to be presumed that there is any joint family property. There is no presumption that property which

belongs to a member of a joint family is joint family property. The plaintiff in setting out to prove that property "B" is joint family property must in the first instance discharge the burden of proving that fact. But it is also established that if there is a joint family, which possesses a nucleus of joint family property, then property acquired by a member of that family is presumed to be joint family property. But the question arises what is meant by a nucleus. In my opinion the nucleus of joint family property necessary to> give rise to the presumption must be family property from which the purchase money for the property in suit might have been derived wholly, or at any rate in considerable part. It is not in my opinion enough to prove, as Mr. Dave has contended in this case, that the mere possession of joint family property at the date of the purchase of the property in suit is enough to raise the presumption that the property in suit is itself joint family property. It would, I think, be unfortunate if. the Court was bound to presume that some- thing had occurred, which on the evidence could not possibly have occurred, and if it be shown that the only joint family property existing at the date of the acquisition of the property in suit was of such a nature that it could not possibly have been the means of acquiring the property in suit, then Beaumont CJ. in my opinion the presumption that the property in suit is joint family property does not arise. I think that the law as stated in Sir Dinshah Mulla's book on Principles of Hindu Law, 8th edn., p. 256, in the last paragraph of Section 233, is rather too widely stated. The Privy Council case on which the author relies, viz., *Lal Bahadur v. Kanhaia Lal*[1] was a case in which there was a substantial nucleus of joint family property at the date of the purchase therein in question, out of which the suit property might have been: acquired. I think that the law is accurately stated by Mr. Justice Ananta-krishna Ayyar in *Sankaranarayana v. Tangaratna*[2]

4. After discussing the evidence his Lordship proceeded :

5. In my opinion the burden originally was on the plaintiff, and he has not succeeded in shifting that burden merely by showing that at the date of the purchase Hargovandas had vested in him joint family property, since the evidence shows that such joint family property could not possibly have been used for the purpose of acquiring this property. I think therefore that the plaintiff fails to discharge the burden of showing that property "B" at the date of its purchase became joint family property.

6. Then it is said that if the property was not originally joint family property, it was blended by Hargovandas with the admitted joint family property, and at his death it had therefore become joint family property. It is no doubt the law that if a man treats his own property as part of the joint family property, he is presumed to have thrown the whole amount into one common stock.

7. After further discussing the evidence his Lordship came to the conclusion' that property "B" was not blended by Hargovandas with the other admitted joint family property, and concluded :

8. In my opinion the judgment of the learned Judge was right, and the appeal-must be dismissed

with costs.

N.J. Wadia, J.

9. I agree.

Appeal dismissed.

[1](1906) L.R. 34 IndAp 65 : 9 Bom. L.R. 597

[2] AIR [1930] Mad. 662